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(Original Signature of Member)

112TH CONGRESS
1ST SESSION

H. R. _____

To amend titles 49 and 46, United States Code, and the Homeland Security Act of 2002 to provide for certain improvements in surface transportation security, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. ROGERS of Alabama (for himself and [see ATTACHED LIST of cosponsors]) introduced the following bill; which was referred to the Committee on

A BILL

To amend titles 49 and 46, United States Code, and the Homeland Security Act of 2002 to provide for certain improvements in surface transportation security, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Modernizing of Docu-
5 mentation and Elimination of Redundant Identification

1 and Security Credentials Act” or the “MODERN Security
2 Credentials Act”.

3 **SEC. 2. CONSOLIDATION AND HARMONIZATION OF SECU-**
4 **RITY THREAT ASSESSMENT PROCESS FOR**
5 **TRANSPORTATION WORKERS.**

6 (a) REQUIREMENT FOR RULEMAKING.—By not later
7 than one year after the date of the enactment of this Act,
8 the Secretary of Homeland Security shall, by rulemaking,
9 consolidate and harmonize the Department of Homeland
10 Security’s security threat assessment process for transpor-
11 tation workers, to reduce redundant background checks
12 performed by the Department to the extent possible under
13 law and in accordance with the relative security
14 vulnerabilities of the transportation sectors and any other
15 security considerations the Secretary determines are rel-
16 evant.

17 (b) CONSULTATION.—In developing the rulemaking
18 under subsection (a), the Secretary shall, within 120 days
19 of enactment of this Act, consult with and seek input from
20 representatives from air carriers, airport operators, labor
21 organizations, port authorities, port operators, and other
22 relevant stakeholders.

23 (c) LIMITATION.—

24 (1) EXISTING PROCESSES AND FUNCTIONS.—

25 Any rule issued under subsection (a) shall not apply

1 to a process or function carried out by a non-Fed-
2 eral airport operator as of the date of enactment of
3 this Act.

4 (2) AUTHORITY TO RESTRICT ACCESS.—Noth-
5 ing in any rule issued under subsection (a) shall af-
6 fect the authority of an airport operator to restrict
7 an individual’s access to secure areas within an air-
8 port or other aviation facility.

9 (d) ANALYSIS.—The rulemaking under subsection (a)
10 shall include an analysis of—

11 (1) how security threat assessment processes
12 for transportation workers will be consolidated and
13 harmonized;

14 (2) any reductions in costs or fees that will be
15 realized; and

16 (3) any other efficiencies, including a reduction
17 or streamlining of pertinent regulations, that will be
18 realized.

19 **SEC. 3. TRANSPORTATION SECURITY ADMINISTRATION EM-**
20 **PLOYMENT DISQUALIFICATION.**

21 Section 44936 of title 49, United States Code, is
22 amended—

23 (1) in subsection (a)(1)(A), by striking “Under
24 Secretary of Transportation for Security” and in-

1 serting “Secretary of Homeland Security (in this
2 section referred to as the ‘Secretary’)”;

3 (2) by striking “Under Secretary” each place it
4 appears (other than in subsection (a)(1)(A)) and in-
5 serting “Secretary”;

6 (3) in subsection (a)(2), by inserting before the
7 period the following: “and the results of that inves-
8 tigation are provided to the Secretary”;

9 (4) in subsection (b)—

10 (A) in paragraph (1)—

11 (i) in subparagraph (A), by striking
12 “or”; and

13 (ii) by striking subparagraph (B) and
14 inserting the following new subparagraphs:

15 “(B) the Secretary determines that the indi-
16 vidual is disqualified under section 70105(c)(1) of
17 title 46 from being issued a biometric or other trans-
18 portation security card; or

19 “(C) the Secretary determines that the indi-
20 vidual poses a threat to transportation or national
21 security.”; and

22 (B) by adding at the end the following new
23 paragraphs:

24 “(4) An individual disqualified by the Federal Gov-
25 ernment from being issued a biometric or other transpor-

1 tation security card under paragraph (1)(B) may seek a
2 waiver pursuant to paragraphs (2) and (3) of section
3 70105(c) of title 46.

4 “(5) Nothing in this subsection shall affect the au-
5 thority of an air carrier, foreign air carrier, airport oper-
6 ator, or government, to disqualify any individual from em-
7 ployment based on a review or adjudication of a criminal
8 history record check.

9 “(6) An airport operator shall not be required to
10 issue an airport credential providing unescorted access to
11 a Secure Identification Display Area to any individual
12 based solely on the waiver process established under this
13 section.

14 “(7) No cause of action, suit, or other proceeding
15 shall arise—

16 “(A) from any denial of a request of a waiver
17 under this section; or

18 “(B) from any disqualification for employment,
19 if the cause of action, suit, or proceeding is based
20 solely on the fact that the applicant for employment
21 was granted a waiver under this subsection.”;

22 (5) in subsection (d), by adding at the end the
23 following: “The fees authorized under this section—

1 “(1) shall not exceed the aggregate costs in-
2 curred by the Department of Homeland Security as-
3 sociated with performing background record checks;

4 “(2) must be reasonably related to the costs of
5 incurred from—

6 “(A) conducting or obtaining a criminal
7 history record check or reviewing available law
8 enforcement databases and commercial data-
9 bases and records of other governmental and
10 international agencies;

11 “(B) reviewing and adjudicating requests
12 for waiver and appeals of agency decisions with
13 respect to performing the background record
14 check and denying requests for waiver and ap-
15 peals; and

16 “(C) any other costs related to performing
17 the background record check; and

18 “(3) may be used, subject to appropriations,
19 only to pay the costs incurred in providing services
20 in connection with the activity or item for which the
21 fee is charged, and may remain available until ex-
22 pended.”; and

23 (6) by adding at the end the following new sub-
24 section:

1 “(f) USE OF INFORMATION.—Any information con-
2 stituting grounds for disqualifying an individual from
3 being issued a biometric or other transportation security
4 card under subsection (b)(1) by the Federal Government
5 shall be maintained by the Secretary and may be shared
6 to the extent allowable under section 552a of title 5.”.

7 **SEC. 4. DISQUALIFICATION FROM BEING ISSUED A BIOMET-**
8 **RIC TRANSPORTATION SECURITY CARD.**

9 (a) PERMANENTLY DISQUALIFYING OFFENSES.—
10 Section 70105(c)(1)(A) of title 46, United States Code,
11 is amended—

12 (1) by redesignating clauses (v), (vi), (vii),
13 (viii), (ix), (x), (xi), and (xii) as clauses (vii), (viii),
14 (ix), (x), (xi), (xii), (xiv), and (xv), respectively;

15 (2) by inserting after clause (iv) the following
16 new clauses:

17 “(v) Aircraft piracy punishable under
18 section 46502(a) of title 49.

19 “(vi) Aircraft piracy outside the spe-
20 cial aircraft jurisdiction of the United
21 States punishable under section 46502(b)
22 of title 49.”;

23 (3) by inserting after clause (xii), as so redesign-
24 nated, the following new clause:

1 “(xiii) Improper transportation of a
2 hazardous material punishable under sec-
3 tion 46312 of title 49.”;

4 (4) in clause (xiv), as so redesignated, by strik-
5 ing “(iv)” and inserting “(vi)”;

6 (5) in clause (xv), as so redesignated, by strik-
7 ing “clauses (v) through (x)” and inserting “clauses
8 (vii) through (xiii)”.

9 (b) INTERIM DISQUALIFYING OFFENSES.—Section
10 70105(c)(1)(B) of title 46, United States Code, is amend-
11 ed by adding at the end the following new clauses:

12 “(xvi) Interference with air navigation
13 punishable under section 46308 of title 49.

14 “(xvii) Forgery of certificates, false
15 marking of aircraft, and other aircraft reg-
16 istration violations punishable under sec-
17 tion 46306 of title 49.

18 “(xviii) Interference with flight crew
19 members or flight attendants punishable
20 under section 46504 of title 49.

21 “(xix) Commission of certain crimes
22 aboard aircraft in flight punishable under
23 section 46506 of title 49.

1 “(xx) Carrying a weapon or explosive
2 aboard aircraft punishable under section
3 46505 of title 49.

4 “(xxi) Destruction of an aircraft or
5 aircraft facility punishable under section
6 32 of title 18.

7 “(xxii) Unlawful entry into an aircraft
8 or airport area that serves air carriers or
9 foreign air carriers contrary to established
10 security requirements punishable under
11 section 46314 of title 49.

12 “(xxiii) Lighting violations involving
13 transportation of controlled substances
14 punishable under section 46315 of title 49.

15 “(xxiv) Violence at international air-
16 ports punishable under section 37 of title
17 18.

18 “(xxv) Conveying false information
19 and threats punishable under section
20 46507 of title 49.”.

21 **SEC. 5. SURFACE TRANSPORTATION SECURITY.**

22 (a) IN GENERAL.—The Homeland Security Act of
23 2002 (6 U.S.C. 101 et seq.) is amended by adding at the
24 end the following:

1 **“TITLE XXI—SURFACE**
2 **TRANSPORTATION SECURITY**

3 **“SEC. 2101. TRANSPORTATION OF SECURITY-SENSITIVE MA-**
4 **TERIALS.**

5 “(a) SECURITY-SENSITIVE MATERIALS.—Not later
6 than one year after the date of enactment of this section,
7 the Secretary shall issue final regulations, after notice and
8 comment, defining security-sensitive materials for the pur-
9 poses of this title.

10 “(b) MOTOR VEHICLE OPERATORS.—The Secretary
11 shall prohibit an individual from operating a motor vehicle
12 in commerce while transporting a security-sensitive mate-
13 rial unless the individual holds a valid transportation secu-
14 rity card issued by the Secretary under section 70105 of
15 title 46, United States Code.

16 “(c) SHIPPERS.—The Secretary shall prohibit a per-
17 son from—

18 “(1) offering a security-sensitive material for
19 transportation by motor vehicle in commerce; or

20 “(2) causing a security-sensitive material to be
21 transported by motor vehicle in commerce,

22 unless the motor vehicle operator transporting the secu-
23 rity-sensitive material holds a valid transportation security
24 card issued by the Secretary under section 70105 of title
25 46, United States Code.

1 “(d) MEMORANDUM OF UNDERSTANDING.—The Sec-
2 retary may enter into a memorandum of understanding
3 with the Secretary of Transportation to ensure compliance
4 with this section.

5 “(e) LIMITATION ON APPLICATION.—This section
6 and the regulations and prohibitions under this section
7 shall not apply to the United States Postal Service and
8 any other department, agency, or instrumentality of the
9 Federal Government.

10 **“SEC. 2102. ENROLLMENT LOCATIONS.**

11 “(a) ENROLLMENT LOCATIONS.—The Secretary
12 shall—

13 “(1) work with appropriate entities to ensure
14 that enrollment locations for individuals applying for
15 a transportation security card under section 70105
16 of title 46, United States Code, have flexible oper-
17 ating hours; and

18 “(2) permit an individual applying for such
19 transportation security card to utilize an enrollment
20 location outside of the individual’s State of residence
21 to the greatest extent practicable.

22 “(b) NUMBER OF LOCATIONS.—The Secretary shall
23 develop and implement a plan—

24 “(1) to offer individuals applying for a trans-
25 portation security card under section 70105 of title

1 46, United States Code, the maximum number of
2 enrollment locations practicable across diverse geo-
3 graphic regions; and

4 “(2) to conduct outreach to appropriate stake-
5 holders, including owners and operators of motor ve-
6 hicles involved in the transportation of security-sen-
7 sitive materials, and labor organizations representing
8 employees of such owners or operators to keep the
9 stakeholders informed of the timeframe and loca-
10 tions for the opening of additional enrollment loca-
11 tions.

12 **“SEC. 2103. COMMERCIAL MOTOR VEHICLE OPERATORS**
13 **REGISTERED TO OPERATE IN MEXICO OR**
14 **CANADA.**

15 “The Secretary shall prohibit a commercial motor ve-
16 hicle operator licensed to operate in Mexico or Canada
17 from operating a commercial motor vehicle transporting
18 a security-sensitive material in commerce in the United
19 States until the operator has been subjected to, and not
20 disqualified as a result of, a security background records
21 check by a Federal agency that the Secretary determines
22 is similar to the security background records check re-
23 quired for commercial motor vehicle operators in the
24 United States transporting security-sensitive materials in
25 commerce.

1 **“SEC. 2104. REDUNDANT BACKGROUND CHECKS.**

2 “(a) IN GENERAL.—The Secretary shall prohibit a
3 State or political subdivision thereof from requiring a sep-
4 arate security background check of an individual seeking
5 to transport security-sensitive material.

6 “(b) WAIVERS.—The Secretary may waive the appli-
7 cation of subsection (a) with respect to a State or political
8 subdivision thereof if the State or political subdivision
9 demonstrates a compelling reason that a separate security
10 background check is necessary to ensure the secure trans-
11 portation of security-sensitive material in the State or po-
12 litical subdivision.

13 “(c) LIMITATION ON STATUTORY CONSTRUCTION.—
14 Nothing in this section shall limit the authority of a State
15 to ensure that an individual has the requisite knowledge
16 and skills to safely transport hazardous materials in com-
17 merce.

18 **“SEC. 2105. TRANSITION.**

19 “(a) TREATMENT OF INDIVIDUALS RECEIVING PRIOR
20 HAZARDOUS MATERIALS ENDORSEMENTS.—An indi-
21 vidual who has obtained a hazardous materials endorse-
22 ment in accordance with section 1572 of title 49, Code
23 of Federal Regulations, before the date of enactment of
24 this title, is deemed to have met the background check
25 requirements of a transportation security card under sec-
26 tion 70105 of title 46, United States Code, subject to

1 reissuance or expiration dates of the hazardous materials
2 endorsement.

3 “(b) REDUCTION IN FEES.—The Secretary shall re-
4 duce, to the greatest extent practicable, any fees associ-
5 ated with obtaining a transportation security card under
6 section 70105 of title 46, United States Code, for any indi-
7 vidual referred to in subsection (a).

8 **“SEC. 2106. SAVINGS CLAUSE.**

9 “Nothing in this title shall be construed as affecting
10 the authority of the Secretary of Transportation to regu-
11 late hazardous materials under chapter 51 of title 49,
12 United States Code.

13 **“SEC. 2107. DEFINITIONS.**

14 “In this title, the following definitions apply:

15 “(1) COMMERCE.—The term ‘commerce’ means
16 trade or transportation in the jurisdiction of the
17 United States—

18 “(A) between a place in a State and a
19 place outside of the State; or

20 “(B) that affects trade or transportation
21 between a place in a State and a place outside
22 of the State.

23 “(2) HAZARDOUS MATERIAL.—The term ‘haz-
24 ardous material’ has the meaning given that term in
25 section 5102 of title 49, United States Code.

1 “(3) PERSON.—The term ‘person’, in addition
2 to its meaning under section 1 of title 1, United
3 States Code, includes a State, local, or tribal govern-
4 ment offering security-sensitive material for trans-
5 portation in commerce or transporting security-sen-
6 sitive material to further a commercial enterprise.

7 “(4) SECURITY-SENSITIVE MATERIAL.—The
8 term ‘security-sensitive material’ has the meaning
9 given that term in section 1501 of the Implementing
10 Recommendations of the 9/11 Commission Act of
11 2007 (6 U.S.C. 1151).

12 “(5) TRANSPORTS; TRANSPORTATION.—The
13 term ‘transports’ or ‘transportation’ means the
14 movement of property and loading, unloading, or
15 storage incidental to such movement.”.

16 (b) CLERICAL AMENDMENT.—The table of contents
17 contained in section 1(b) of the Homeland Security Act
18 of 2002 (116 Stat. 2135) is amended by adding at the
19 end the following:

“TITLE XXI—SURFACE TRANSPORTATION SECURITY

“Sec. 2101. Transportation of security-sensitive materials.

“Sec. 2102. Enrollment locations.

“Sec. 2103. Commercial motor vehicle operators registered to operate in Mexico
or Canada.

“Sec. 2104. Redundant background checks.

“Sec. 2105. Transition.

“Sec. 2106. Savings clause.

“Sec. 2107. Definitions.”.

20 (c) SECURITY CARDS FOR CERTAIN MOTOR VEHICLE
21 OPERATORS.—Section 70105(b)(2) of title 46, United

1 States Code, is amended by striking “and” after the semi-
2 colon at the end of subparagraph (F), by striking the pe-
3 riod at the end of subparagraph (G) and inserting “; and”,
4 and by adding at the end the following new subparagraph:

5 “(H) an individual who operates a motor
6 vehicle in commerce while transporting security-
7 sensitive material (as that term is defined in
8 section 1501 of the Implementing Rec-
9 ommendations of the 9/11 Commission Act of
10 2007 (6 U.S.C. 1151).”.

11 (d) CIVIL PENALTIES.—Section 114(v) of title 49,
12 United States Code, is amended—

13 (1) in paragraph (1)(A), by inserting “under
14 title XXI of the Homeland Security Act of 2002 or”
15 after “Secretary of Homeland Security”; and

16 (2) by striking “applicable provision of this
17 title” each place it appears and inserting “applicable
18 provision”.

19 **SEC. 6. LIMITATION ON ISSUANCE OF HAZMAT LICENSES.**

20 Section 5103a of title 49, United States Code, and
21 the item relating to that section in the analysis for chapter
22 51 of such title, are repealed.

23 **SEC. 7. DEADLINES AND EFFECTIVE DATES.**

24 (a) ISSUANCE OF TRANSPORTATION SECURITY
25 CARDS.—Not later than one year after the date of the en-

1 actment of this Act, the Secretary of Homeland Security
2 (as that term is defined in section 70101 of title 46,
3 United States Code) shall begin issuance of transportation
4 security cards under section 70105(b)(2)(H) of title 46,
5 United States Code, as amended by this Act, to individuals
6 who seek to operate a motor vehicle in commerce while
7 transporting security-sensitive materials.

8 (b) EFFECTIVE DATE OF PROHIBITIONS.—The pro-
9 hibitions under in section 2101 of the Homeland Security
10 Act of 2002 (as added by section 5) shall take effect on
11 the date that is 2 years after the date of enactment of
12 this Act.

13 (c) EFFECTIVE DATE OF SECTION 6 AMEND-
14 MENTS.—The amendments made by section 6 of this Act
15 shall take effect on the date that is 2 years after the date
16 of enactment of this Act.

17 **SEC. 8. TASK FORCE ON DISQUALIFYING CRIMES.**

18 (a) ESTABLISHMENT.—The Secretary of Homeland
19 Security shall establish a task force, with an official des-
20 ignated by the Secretary to be the Chair of the task force,
21 to review the lists of crimes that disqualify individuals
22 from transportation-related employment under current
23 regulations of the Transportation Security Administration
24 and assess whether such lists of crimes are accurate indi-
25 cators of a terrorism security risk.

1 (b) MEMBERSHIP.—The task force shall be composed
2 of representatives of appropriate industries, including
3 labor unions representing employees of such industries,
4 Federal agencies, and other appropriate entities, as deter-
5 mined by the Secretary.

6 (c) REPORT.—Not later than one year after the date
7 of enactment of this Act, the task force shall submit to
8 the Secretary and the Committee on Homeland Security
9 of the House of Representatives a report containing the
10 results of the review, including recommendations for a
11 common list of disqualifying crimes and the rationale for
12 the inclusion of each crime on the list.